Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

**No. 75-628**

CURTIS CRAIG and CAROLYN WHITENER,
d/b/a "The Honk and Holler,"
*Appellants,*

VERSUS

HONORABLE DAVID BOREN, Governor, State of Oklahoma, HONORABLE LARRY DERRYBERRY, Attorney General, State of Oklahoma, HONORABLE D. M. BERRY, Chairman, HONORABLE LAWTON L. LEININGER, Vice-Chairman, HONORABLE J. L. MERRILL, Secretary-Member, Oklahoma Tax Commission, HONORABLE RAY WALL, Presiding Judge, Ninth Judicial District Court, State of Oklahoma, HONORABLE CHARLES H. HEADRICK, District Attorney, Ninth Judicial District, State of Oklahoma, HONORABLE ROSE JARVIS, District Court Clerk, Payne County, State of Oklahoma, HONORABLE FRANK PHILLIPS, Sheriff, Payne County, State of Oklahoma, and HONORABLE HILARY DRIGGS, Chief of Police, Stillwater, Oklahoma,
*Appellees.*

## MOTION TO AFFIRM

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December, 1975

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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## MOTION TO AFFIRM

Come now the appellees, Honorable David Boren, Governor, State of Oklahoma; Honorable Larry Derryberry, Attorney General, State of Oklahoma; Honorable D. M. Berry, Chairman; Honorable Lawton L. Leininger, Vice-Chairman; Honorable J. L. Merrill, Secretary-Member,

Oklahoma Tax Commission; Honorable Ray Wall, Presiding Judge, Ninth Judicial District Court, State of Oklahoma; Honorable Charles H. Headrick, District Attorney, Ninth Judicial District, State of Oklahoma; Honorable Rose Jarvis, District Court Clerk, Payne County, State of Oklahoma; Honorable Frank Phillips, Sheriff, Payne County, State of Oklahoma, and Honorable Hilary Driggs, Chief of Police, Stillwater, Oklahoma, and request this Court to affirm the ruling of the three-judge United States District Court for the Western District of Oklahoma whereby the Court refused to enjoin the Oklahoma Statutes prohibiting sale of 3.2 per cent beer to males 18 through 20 years of age, while allowing such sale to females of the same ages, as applied to such sales for consumption off the premises of the vendor. The District Court's opinion is set out in full in the Appendix of the Jurisdictional Statement of appellants.

## STATEMENT OF FACTS

Appellees are in substantial agreement with the sequence of events set forth in appellants' Jurisdictional Statement generally contained in parts A through C. Appellees further stipulate that the Appendix is an accurate reproduction of the opinions, judgments and law which they purport to depict, and the same are hereby adopted by appellees as a basis for this Court sustaining this Motion to Affirm. Appellees disagree with the remaining contentions and assertions in appellants' Jurisdictional Statement and will direct this response to the main thrust of the Jurisdictional Statement contained in Section F.



## ARGUMENT

This District Court's decision, which is lengthy and well reasoned, ultimately holds that the record supports the classification resulting from the Oklahoma Statutes as reasonable, not arbitrary, and rests on a ground of difference having a fair and substantial relation to the apparent objectives of the legislation. The legislation was not a denial of equal protection and in reaching this decision the trial court did not hold that the Twenty-first Amendment to the United States Constitution was determinative, rather, it only added weight to the classification determined to be reasonable.

### PROPOSITION I

### A FINDING BY THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT OF A SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTION IS NOT DETERMINATIVE OF THE ISSUE.

Appellants in Section F1, pages 10-11 of the Jurisdictional Statement, list first the decision by the United States Court of Appeals for the Tenth Circuit (on appeal from a Motion to Dismiss sustained by the trial court), which determined that a substantial federal question existed and remanded the case for hearing on the merits, as a ground on which this Court should accept for full briefing and oral argument this case on appeal. This proposition suggests that such a finding is binding upon this Court as determining a substantial federal question justifying full review. Appellees would respectfully suggest to the Court that the issue before the Tenth Circuit was whether or not a summary disposition of the allegations in the Complaint of the

appellants was justified. This determination obviously rejected such an assertion and remanded the case for full argument and trial on the merits by a three-judge panel. No opinion as to the merits of the case was forthcoming from the Tenth Circuit. See Sections F2-F3 in appellants' Jurisdictional Statement. This Court should determine in and of itself whether the questions presented by the appellants are substantial enough to justify full review and the Tenth Circuit's opinion is not determinative.

## PROPOSITION II

### THE PRESENCE OF AN AGE-SEX CLASSIFICATION DOES NOT AUTOMATICALLY PRESENT A SUBSTANTIAL FEDERAL QUESTION.

Appellant cites in Section F2 of the Jurisdictional Statement various other cases which this Court has decided which dealt in some degree with sex equality issues, and thereby appears to suggest that this Court should, by implication, determine that the case at bar must be substantial in the issues attempted to be presented. Appellant can merely respond that each case must stand on its own as to whether a substantial federal question is presented of sufficient scope and magnitude to justify this Court in requiring full briefing and argument.

## PROPOSITION III

### THIS CASE IS NOT IN CONFLICT WITH RECENT SUPREME COURT DECISIONS.

Appellants, in Section F3 of the Jurisdictional Statement, cite numerous cases with which they feel the decision below is in conflict, but fail at this point in their



Jurisdictional Statement to refer to *California* v. *LaRue*, 409 U.S. 109, which dealt most closely with sex equality in conjunction with the Twenty-first Amendment, and with which this case is most similar in legal context. In the case at bar, the State's right to regulate intoxicating beverages is an issue which the trial court took into consideration, although this Twenty-first Amendment right was not determinative of the constitutionality of the state statutes; and while appellants suggest that the decision of the trial court is in direct conflict with *Stanton* v. *Stanton*, ..... U.S. ....., 43 L.Ed.2d 688, 95 S.Ct. ....., the trial court, indeed, carefully considered this recent opinion and concluded that the case at bar was quite distinguishable. The classification by statute was not based on "old notions" or on archaic or overbroad generalizations not tolerated under the Constitution. See page A17. Therefore, this case is not in conflict with any recent decisions of the Supreme Court on issues concerning sex classification in regard to the Fourteenth and Twenty-first Amendments.

## PROPOSITION IV

### THE CASE AT BAR DOES NOT REQUIRE THE PROMULGATION OF A NEW "TEST" FOR CLASSIFICATION STATUTES.

Appellants assert in Section F4 of their Jurisdictional Statement that the trial court erred in its determination of the proper test to be applied in considering the constitutionality of the state statutes. The trial court adopted the test set forth in *Reed* v. *Reed*, 404 U.S. 71. See pages A6-A8, and having applied the test to the evidence found "that a rational legislative judgment was made in the alcoholic beverage regulations" (see page A4). See also Section V of

the trial court's Opinion, pages A19-A20. It should be noted that the trial court placed the burden upon the State to prove the justification for the classification, page A6, and ultimately determined that the State had met that burden.

**PROPOSITION V**

**THE TRIAL COURT PROPERLY EVALUATED THE RELATIONSHIP BETWEEN THE FOURTEENTH AND TWENTY-FIRST AMENDMENTS TO THE UNITED STATES CONSTITUTION.**

Appellants suggest in Section F4 of their Jurisdictional Statement that the trial court somehow "diluted" the Equal Protection Clause of the Fourteenth Amendment by adopting the Court's test in *Reed, supra*. This assertion completely ignores what the trial court actually did concerning the relationship between the Twenty-first and the Fourteenth Amendments. As stated at page A6 in the trial court's Opinion:

> "First, we feel the fact that the attack here is on an alcoholic beverage regulation, buttressed by the Twenty-first Amendment, does not call for the use of a less stringent equal protection standard than would otherwise apply, although we feel that this circumstance is to be weighed in our decision. The Supreme Court has recognized that its decisions do not go so far as to hold or say that the Twenty-first Amendment supersedes all other constitutional provisions in the area of liquor regulations. *California* v. *LaRue*, 409 U.S. 109, 115. See also *Hostetter* v. *Idlewild Liquor Corporation*, 377 U.S. 324, 332; *Women's Liberation Union of Rhode Island* v. *Israel*, ..... F.2d ..... (1st Cir. 3/4/75). The demands of the Equal Protection Clause still apply, and the standards of revie (*sic*) that it mandates are not relaxed."



The appellants' assertion in this regard is completely without merit in that the trial court closely construed the state statutes and required the State to show that its classification was reasonable, thus, no dilution of equal protection has been accomplished. On the contrary, the Court very closely examined the Oklahoma Statutes in question and determined that they were reasonable.

**PROPOSITION VI**

**IN THE ABSENCE OF A SUBSTANTIAL FEDERAL QUESTION THIS COURT NEED NOT REVIEW THE FINDINGS OF FACT OF THE TRIAL COURT.**

Appellants suggest in Sections F6 and F7 that the evidence submitted by the appellees in and of itself raises a substantial federal question. Appellants ignore the trial court's actual findings of fact and purpose of the evidence by insisting that the trial court created and authorized a "permanent irrebuttable presumption of fact" to the effect that males in the 18-20 year-old group are somehow inferior. While the trial court specifically rejected this assertion in Section IV of its Opinion, pages A18-A19, the trial court properly pointed out that the case at bar does not create labels on individuals to their prejudice, and that there is no reasonable alternative available to the State in making the crucial determination in the case at bar as was presented in cases cited in said Opinion.

Appellants alone assert that the evidence submitted by the appellees shows some inferiority in the male class. While the thrust of the proof was not intended to, nor did it, show any such "fact". Rather, the Court's evaluation of the evidence and the proof that the evidence showed is

specifically set out in the Court's Opinion at page A14 as follows:

> "With this in mind, we find in the record sufficient support of the rationality of the limited sex-based classification in question under the *Reed* test. We find such support in the record data indicating more likely consumption of beer by males in the 18-20 age group; more driving in this age group by males with significant BAC levels than by females; the greater number of vehicle injuries in the younger male group; and the apparent relationship of such injuries to alcohol use. We conclude that the classification made has a fair and substantial relation to apparent objectives of the legislation for the protection of those affected and the public generally." (Footnotes omitted.)

As indicated above, there is a complete absence of any finding of male inferiority or indelible label placed on males in this age group as suggested by appellants. Appellants further disregard the fact that the classification is not merely for the protection of those within the class, but is for the protection of all of the public in the State of Oklahoma. Therefore, appellants' argument is completely misplaced and the emphasis upon what the appellants feel the evidence proved to them should not be equated with what the evidence proved to the trial court. Further, this Court need not speculate, as do the appellants, as to any other classification by race or otherwise which might, by some stretch of the imagination, be deemed approved by the Opinion of the trial court. The case at bar is limited to the very narrow classification of an age group of 18 to 20 and there only in the consumption of 3.2 per cent beer, which regulation is strengthened by reason of the Twenty-first Amendment. The trial court did not broaden this concept



nor does its decision have wide-ranging ramifications which might deny equal protection to the citizens of this nation as suggested by the appellants.

## CONCLUSION

The trial court properly applied the test as set forth in *Reed* v. *Reed, supra,* and gave very close scrutiny to the statutes in question in conjunction with the Twenty-first Amendment and said decision is in all respects proper and the trial court properly denied the injunctive relief requested by the appellant. The findings of fact and conclusions of law of the trial court indicate no persuasive showing to support any of the complaints raised by the appellants. All issues raised were properly decided by the lower court. Accordingly, a full hearing of this case, including briefs and oral argument, is not necessary to a proper decision by this Court. Appellees respectfully request that the judgment of the District Court be affirmed.

Respectfully submitted,

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Attorney General of Oklahoma

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112 State Capitol Building
Oklahoma City, Oklahoma 73105

*Counsel for Appellees*

December, 1975

**CERTIFICATE OF SERVICE**

This is to certify that three (3) true and correct copies of the foregoing instrument were served upon:

Mr. Frederick P. Gilbert
1401 National Bank of Tulsa Building
Tulsa, Oklahoma 74103

the only party to be served, by mailing such true and correct copies, postage prepaid, this ..... day of December, 1975.

.....

James H. Gray